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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0107]

[4500030113]

RIN 1018-AY26

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Proposed Listing of the Distinct Population Segment of the North American Wolverine Occurring in the Contiguous United States as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the distinct population segment of the North American wolverine (*Gulo gulo luscus*) occurring in the contiguous United States as a threatened species. We also reopen the comment period on the proposed rule to list that distinct population segment. We are taking this action based on substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, making it necessary to solicit additional information by reopening the comment period for 90 days. We will publish a final listing determination on or before August 4, 2014.

DATES: The comment period end date is [INSERT DATE 90 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. If you comment using the Federal eRulemaking Portal (see **ADDRESSES**), you must submit your comment by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R6–ES–2012–0107, which is the docket number for the proposed rule to list the contiguous United States distinct population segment of the wolverine as threatened. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to locate the proposed rule. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0107; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jodi Bush, Field Supervisor, Montana Ecological Services Office, 465 Shepard Dr., Helena, MT 59601; by telephone at (406) 449-5225; or by facsimile at 406-449-5339. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2013, we published a proposed rule (78 FR 7864) to list the distinct population segment of the North American wolverine occurring in the contiguous

United States as threatened, under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning the distinct population segment of the North American wolverine (*Gulo gulo luscus*) occurring in the contiguous United States, please refer to the February 4, 2013, proposed rule. The proposed listing rule opened a 90-day comment period, ending May 6, 2013. In addition to the original comment period associated with the publication of the proposed rule, we held three public information workshops in conjunction with three public hearings in March 2013: March 13 in Boise, Idaho; March 19 in Lakewood, Colorado; and March 27 in Helena, Montana. On October 31, 2013, we reopened the comment period for 30 days to allow additional comment on scientific issues raised by two peer reviewers and several State wildlife agencies (78 FR 65248). The second comment period closed on December 2, 2013.

Section 4(b)(6) of the Act requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination.

Since the publication of the proposed rule, there has been substantial disagreement regarding the interpretation of the habitat requirements for wolverines and the available climate change information used to determine the extent of threats to the species. Differing interpretations of the available climate change information have led to

a significant disagreement regarding the current status of the species. In particular, some commenters and peer reviewers raised questions regarding:

(1) The interpretation of scientific literature in the proposed rulemaking and scientific literature that may not have been readily available for our use in our analysis to define habitat parameters. Specifically, some commenters and peer reviewers questioned the basis for defining wolverine habitat based on persistent spring snow used by Copeland *et al.* (2010). Some peer reviewers and commenters suggested that other methods of habitat definition or other dates used to define habitat based on persistent snow are more scientifically defensible and would yield very different results.

(2) Commenters suggested that McKelvey *et al.* (2011) used an invalid habitat model developed by Copeland *et al.* (2010) to project future climate impacts to wolverine habitat, and for that reason, the commenters believe projections in McKelvey *et al.* (2011) are also invalid.

(3) Commenters also asserted that there is high uncertainty with projections made using downscaled global climate modeling, which we used to analyze the impacts of climate change on wolverine habitat and ecology.

As a result of these comments and peer reviews, there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our listing determination. Therefore, in consideration of these disagreements, we have determined

that a 6-month extension of the final determination of this rulemaking is necessary, and we are hereby extending the final determination for 6 months in order to solicit information that will help to clarify these issues and fully analyze this information.

As noted in the proposed listing rule (78 FR 7864), we were previously required by statutory deadline to make a final decision on the wolverine listing no later than February 4, 2014. Therefore, with this 6-month extension, we will make a final determination on the proposed rule no later than August 4, 2014. In conjunction with the proposed rule to list the wolverine, we also proposed a special rule under section 4(d) of the Act that would tailor the prohibitions of the Act to specifically address the threats to wolverines (78 FR 7864), and, in a separate rule, we proposed the establishment of a nonessential experimental population area for the wolverine in the southern Rocky Mountains of Colorado, southern Wyoming, and northern New Mexico (78 FR 7890). Because these rules are contingent on a wolverine listing, our final decisions for these rules will also be delayed until we make a final listing determination for the distinct population segment.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing (and special 4(d) rule) for the distinct population segment of the North American wolverine occurring in the contiguous United States that was published in the **Federal Register** on February 4, 2013 (78 FR 7864). We will consider

information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

We are particularly interested in new information and comments regarding:

- (1) Whether there is scientific information in addition to that considered in our proposed rule that may be useful in our analysis.
- (2) Whether persistent spring snow represents a reasonable estimate of wolverine habitat.
- (3) The use of projected amounts and distribution of persistent spring snow to assess the potential impacts of climate change on wolverine habitat.
- (4) The use of information generated by downscaled global climate models as a basis to then project and evaluate the impacts of climate change on wolverine habitat.
- (5) The potential effects on wolverine from the projected changes in its habitat related to climate change.

If you previously submitted comments or information on the proposed rule during the two previously open comment periods, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the

preparation of our final determination. Our final determination concerning the proposed listing will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R6–ES–2012–0107, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2012–0107, or by mail from the Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 29, 2014

Signed: /s/ Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service

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